

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Proposed Amendments to
Filing Requirements

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Docket No. RM2003-1

OFFICE OF THE CONSUMER ADVOCATE
COMMENTS ON NOTICE OF PROPOSED RULEMAKING
CONCERNING EVIDENCE SUPPORTING RATE AND CLASSIFICATION CHANGES
(February 12, 2003)

The Office of the Consumer Advocate ("OCA") hereby responds to the Commission's Notice of Proposed Rulemaking ("Notice") inviting comments on or before February 12, 2003, on the Commission's proposal to require that Postal Service rate and classification requests must include a witness' testimony that includes a "roadmap" as to how the Postal Service's witnesses' testimony interrelates to the case in its entirety and to identify all material changes affecting cost attribution methodology, volume projections, or rate design.¹

The OCA wholeheartedly supports the Commission's proposed rule change requiring that the "Postal Service submit a single piece of summarizing testimony providing a roadmap of its filing and identifying all methodological changes." (Notice at 5.) The Commission indicated that a roadmap of each omnibus filing is necessary. A single witness needs to address the proposal as a whole, describing how the various testimonies interrelate, and needs to identify changes from the preceding recommended decision affecting costing attribution changes, volumes, or rate design. (Notice at 6.)

¹ "Notice of Proposed Rulemaking to Concerning Evidence Supporting Rate and Classification Changes," Order No. 1355, December 13, 2002.

Thus, an overview is necessary together with a highlight of "all material changes in cost attribution methodology, the development of volume estimates, and rate design."

(Notice at 7.)

These needs are accomplished by relocating and clarifying the Commission's rules on this subject. It is necessary that the overview witness "identify the subject matter of each witness's testimony" relying upon the testimony of another witness and to "explain how the testimony of the various witnesses interrelates" and to "highlight "substantive" and "meaningful" changes in cost methodology, volume estimation, and rate design." (Notice at 7-9). This would be accomplished by the newly proposed Section 39 C.F.R. §3001.53(b) that requires a description of the linkage between the Postal Service witnesses' testimony. A further requirement to highlight methodological changes is set forth in §3001.53(c) whereby the "sponsoring witness" is required to provide the details of the change, including estimating or quantifying its effects.

I. OCA Suggested Clarifications of Rule Changes Proposed by the Commission

The Commission states that "the intent of the proposed rules would be satisfied if the direction of the change were indicated." (Notice at 9.) That is, that the proposed change increased (or decreased) mail processing variability by x percent or that the proposed change in cost distribution shifted \$x million to a different class or subclass. However, the Commission says that changes not causing a significant cost shift do not need to be addressed. (Notice at 9.) Recognizing difficulties inherent in quantification, the Commission requested comment on the difficulty of quantification. Also, the Commission would require that the Postal Service witnesses address changes in volume estimates based on alternative specification of demand equations and changes

in rate design that will effect changes in rate levels. (Notice at 10.) The Commission requests comments upon the "benefits of imposing this requirement" and "potential methods for evaluating the sufficiency of estimates," if imposed. (Notice at 9.)

The OCA believes that the Postal Service should be required to quantify the impact of methodological changes as suggested in the text of the Notice but not specifically required by the draft rule. The text of the Notice states that the Commission "will accept good faith estimates" to capture substantive changes that meaningfully affect cost estimates and volume projections or rate design changes that materially affect rate levels. Unfortunately, the specific language proposed in the Commission order in the new section, §3001.53(c), does not specifically require that the impact of material changes in cost methodology, volume estimation or rate design must be quantified. The proposed language merely calls for "a discussion of the impact of such a change on the levels of attributable costs, projected volumes, and rate levels."

If there are several methodological changes, the individual impact each change has on costs, volumes, or rate levels is masked. Even the submittal of a Commission version calculated using previously approved Commission methods in the most recent general rate proceeding does not provide the impact of each individual methodological change. Only the Postal Service, in the first instance, can reasonably be expected to calculate such information in a timely manner. The Postal Service should be able to provide this information at the time of its filing and should be required by specific language in the Commission's rules, to provide quantitative estimates of the impact of each methodological change. This requirement is particularly important where the impact of a change in method is significant, *i.e.* where it has a material impact on the

attributable costs, volumes or, at the very least, on proposed rate levels. In any event, the Postal Service should be aware of the impact of its proposed changes and it alone is best able to calculate those impacts.

A further benefit of the quantification is that it will speed the hearing process as the underlying workpapers for any quantification will provide guideposts for the Commission and participants as to the significance of the individual changes in methodology. Otherwise, significant delays occur as the Commission and/or participants seek the detail through interrogatories to the Postal Service. Alternatively, participants have no choice but to do the calculations on their own which are extremely complex and which only a few participants are able to actually perform.

II. Additional Rulemaking Suggestions

The Commission's Order establishing the instant rulemaking proceeding generously "welcomes any other suggestions regarding possible improvements to its procedures." (Notice at 10). As it happens, the OCA does have additional suggestions that would be important additions to the Commission's rules and practices to facilitate the analysis of cases, provide a more thorough understanding of proponents' direct cases, and ensure adequate and sufficient notice of proposed Commission actions to all potentially interested persons.

A. A Witness Rather Than An Institution Must Respond to Interrogatories Seeking Clarification of a Proponent's Position

The OCA believes that, unlike the present practice, the Postal Service (and other proponents) should be required to provide an answer by a witness (as opposed to an institutional response) for all interrogatories posed to clarify the proponent's proposals and evidence in a proceeding. On the other hand, institutional responses would

continue to be acceptable to discovery requests submitted for the purpose of obtaining evidence needed by a litigant to support its direct case.

OCA observes that the Commission requires the Postal Service to route all Presiding Officer Information Requests to a witness, presumably so that questions remaining concerning written discovery responses can be answered finally and completely during the witness' appearance for oral questioning. OCA believes that this approach should be applied to participants' written discovery requests as well.

The situation frequently arises (for participants) that discovery comes to an end without a full, complete clarification of the rationale or underlying support for a proponent's direct case. Efforts of a participant to gain this understanding should not be checked by a proponent's tactic of re-directing the question from a witness to the institution. The timing of written discovery (which is the only questioning method available once the institution has decided to have questions re-directed to it, rather than a witness) is far more protracted than the time of oral questioning. Once a question is posed as written discovery, participants must generally wait 14 days for an answer. (39 C.F.R. §3001.26 and 3001.27). If the answer is unclear or incomplete, another question may be used to follow up; again the questioning party must wait 14 days for an answer. Oral questioning, on the other hand, results in an answer being given seconds after the question has been posed, rather than weeks later. Oral questioning is often the only viable tool to have evidentiary and rationale questions completely answered. OCA recommends that the Commission modify Rules 26 and 27 to prohibit the re-direction of discovery questions to the institution when the nature of the question is to clarify the rationale or underlying support for the witness' testimony. Furthermore, if a participant

has posed a question that is not clearly the responsibility of a particular witness because of the failing of the proponent to assign responsibility for a key issue to a particular witness, the Commission should clarify Rules 26 and 27 to provide that questions of this type be re-directed to a witness initially filing testimony or to a new witness (furnished by the proponent) who has knowledge of the matter being clarified. Alternatively, OCA would not be opposed to having proponents provide institutional answers (as opposed to witness answers) if the proponents are required to identify in the response provided a witness who will be responsible for answering oral questions should a questioning party so request.

B. The Commission's Current Procedures Would Be Improved by Having the Commission Place a Notice in the Federal Register Immediately Following the Filing of Participants' Direct Cases if New or Alternative Proposals Have Been Submitted in a Participant's Direct Case

The OCA suggests another procedure for Commission consideration. In a case set for hearing, the Commission should provide for Federal Register notice of alternative proposals that differ from the Postal Service's proposal. In this way, any potential concern that new matters raised as alternatives during the course of proceedings will be publicly announced. This will avoid with certainty any potential claim that the ultimate decision the Commission recommends involves a course of action that was not adequately noticed. It will insure that new alternatives not noticed in the original Federal Register notice are brought to the public's attention and thus insure fairness and due process on that score.

This precise issue was recently brought before the Commission in the negotiated service agreement (NSA) proceeding in Docket No. MC2002-2. There, upon the filing of the OCA's alternative proposal as rebuttal testimony, Capital One Services by Notice

raised a concern that, if the OCA alternatives were considered by the Commission, such consideration "would violate notice requirements" because there may not have been adequate public notice of those matters.² This was echoed by the American Postal Workers Union, AFL-CIO which said the OCA proposals would raise issues of notice and procedural due process.³ And the Presiding Officer agreed, finding that the Notice "raises important due process and other legal issues."⁴ Although the Commission rejected the argument, the notice and due process issues were nevertheless seriously presented and considered.⁵ The Commission concluded that its published Notice and Order "was sufficiently expansive to require no further action at this time."⁶ The Commission said there should be a "reasonable expectation" the final recommendation will not conform exactly to the initial request.⁷

To fully avoid any such challenges in the future, and even though, in many cases, the original Commission notice is sufficient to give interested parties notice that the ultimate recommendation may differ from the original proposal, the OCA suggests that the Commission routinely provide for public notice in the Federal Register of all alternative rate or classification proposals presented during a hearing. Even if such a step is not strictly necessary, this extra measure of due process should avert challenges

² "Notice of Intention to Object to Admission of OCA Testimony and Request for Declaratory Ruling," January 8, 2003 at 4.

³ "Response of American Postal Workers Union, AFL-CIO to Motion of Postcom, et al. To Schedule Rebuttal Testimony, Order No. 1359, January 8, 2003.

⁴ "Presiding Officer's Ruling Certifying Questions to Commission," January 17, 2003 at 2.

⁵ "Order Accepting Certification of Questions and Disposing of Motion for Declaratory Ruling," February 3, 2003.

⁶ Id. at 8-9.

⁷ Id. at 9.

in future cases that are grounded in due process notice concerns. OCA recommends that this practice be adopted by the Commission, but does not believe it necessary to formalize the practice in a rule.

C. Proposed Additional USPS Reporting Requirements

The OCA has recently proposed additional rule changes relating to the Postal Service's filing of additional periodic reports pursuant to Rule 102.⁸ To the extent they may be deemed by the Commission to be more appropriately brought to the Commission's attention in this docket, the OCA incorporates herein those comments for the Commission's consideration in this rulemaking docket.

The Postal Reorganization Act requires the Commission to make recommended rate decisions pursuant to §3622 in accordance with several factors, one is "the value of the mail service *actually* provided each class or type of mail service to both the sender and the recipient." (Emphasis supplied.) Also, §3623 requires the Commission to take into account factors such as the "reliability" and the "speed of delivery" of mail classifications when recommending a decision establishing or changing mail classification schedules. Thus, the Commission and participants in Commission proceedings, or users of the Postal Service who may have standing to file complaints if they believe that they are not receiving postal service in accordance with the policies of the Postal Reorganization Act, must have measurements of the level of service actually being provided as well as data regarding the reliability and speed of delivery of mail in the various classifications. These measurements of service levels are factors to be weighed in establishing pricing levels among and between classes of service. Also,

⁸ See, "Office of the Consumer Advocate Comments on Notice of Proposed Rulemaking To Revise the Commission's Periodic Reporting Rule," Docket No. RM2003-3, February 10, 2003.

measures of service reliability and availability are factors that are increasingly significant. With increasing use of the internet by mailers, it is now more important than ever that the Postal Service regularly report on its service performance as well as the service standards it is attempting to maintain. All this is needed by the Commission and interested persons to determine the appropriate and necessary levels of service required to maintain customer satisfaction and thus mail volume.

It is useful to recall the policies and aims of the nearly 30-year-old rulemaking proceeding (Docket No. RM 76-5) that established the first set of periodic reporting rules:⁹

Currently, the Commission acquires the majority of the data necessary for the performance of its regulatory functions only during the pendency of formal proceedings. The data accompanies a request of the Service. . .or is received through the discovery process As the Commission observed in the notice instituting this proceeding, when the acquisition of information is confined primarily to the hearing process, the time required for evaluating a rate request is increased.

If the data currently made available to the Commission and interested persons were made available on an ongoing basis . . . substantial benefits would inure to the Commission and the parties. The proposed rules will provide current data which will assist the Commission in keeping fully apprised of developing circumstances having an effect on its regulatory functions. Additionally, continued access to the data will assist interested members of the public in more thoroughly evaluating a filing of the Service and making alternative presentations within the time constraints imposed by the statutory directive [for expedition].

It is certainly appropriate to re-assess periodic data reporting needs after the many and varied experiences accumulated in scores of cases over nearly three decades. The OCA therefore proposes the following additional Commission reporting rules.

1. Delivery-Time Measurement Reports

The OCA proposes that the Commission include other reports on the list of required periodic reports codified at 39 C.F.R. §102, by adding to §102(d) *Miscellaneous reports* a new §102(d)(6).

First-Class Elapsed Time Data. The OCA believes that for adequate and continuing monitoring of the Postal Service's service performance it is now necessary for the Commission to require the filing of the Postal Service's quarterly and annual EXFC reports on the average days to deliver First-Class Mail: "External First-Class Mail Measurement System." This information should be required on a quarterly and annual basis in an electronic format readable by publicly available PC software.

Such a filing requirement is not burdensome to the Postal Service as the information is now presented by performance cluster and as national data on the Postal Service's web site (<http://ribbs.usps.gov/mtac.htm>). On the other hand, because of the vital need of this information for sufficient review of the Postal Service's performance in the future, the Commission and others cannot rely upon the continued availability of this information on an internet site, nor can the Commission be assured that the information as presented on the web site will be consistent. The information may also become only intermittently available. The Commission should therefore ensure the availability to interested persons and the reliability of the information during and between Commission proceedings by requiring that it must be filed periodically with the Commission as an official Postal Service document as soon as the data is available for review.

⁹ "Order Establishing Periodic Data Reporting System," Order No. 141, October 21, 1976, at 2-3.

Priority Mail Elapsed Time Data. The OCA also requests that the Commission require in the same or in an additional subsection of Rule 102(d) the Postal Service's filing of PETE (Priority End-to-End) performance data. These reports should be filed on a quarterly and annual basis, depending on the periodicity of the Postal Service's collection and aggregation of these data.

Express Mail Elapsed Time Data. The OCA requests that the Commission require in the same or in an additional subsection of Rule 102(d) the Postal Service's Expedited Mail Reporting System (EMRS) performance data.¹⁰ These reports should be filed on a quarterly and annual basis, depending on the periodicity of the Postal Service's collection and aggregation of the data.

The EXFC, PETE, and EMRS data should be provided in the same electronic format as required by the proposed Rule 102, that is, in an electronic format that can be read by publicly available PC software.

2. Collection Mailbox Removals

Another important factor in retaining First-Class Mail volume and maintaining mailer satisfaction is the availability and location of collection mailboxes nationwide. OCA proposes that the Postal Service file annual reports listing the aggregate number of collection mailboxes. Significant changes in Postal Service policies concerning collection mailboxes that have not been reflected in volume projections applied in rate and classification proceedings can cause unanticipated revenue shortfalls of significant proportion. To the extent policies are changed or not followed, particularly on a nationwide basis, the volume of mail may be significantly reduced by increasingly

¹⁰ The EMRS data measuring Express Mail performance data is regularly collected by the Postal Service. See Docket No. R2001-1, Response to OCA/USPS-225 at Tr. 10C at 3455-7.

disgruntled mailers who seek alternatives to the Postal Service. The Commission, participants in Postal Service proceedings, and the public must have the opportunity to review the Postal Service's actions regarding the retention and removal of its collection mailboxes.¹¹

3. Window Service

Another important channel for entering mail into the postal system is through Postal Service retail windows. In order to review the level of service being provided at the windows, the Commission, the OCA and the public should have available for review the total number of clerk hours in providing window services on an annual basis; and, if the data are collected by the Postal Service, the average length of time postal customers wait in line for window service. This information likely is collected and maintained by the Postal Service. If so, it should be made available to the public under the Commission's periodic reporting rules.

4. Additional quality of service data, if collected by the Postal Service, should be reported periodically to the Commission

The following information is integral to the measurement of the quality of the Postal Service's performance and relevant to assuring that the Postal Service is maintaining service in conformance with the policies of the Act and that the service classifications remain appropriate given the levels of service provided. To the extent the reports indicate service is not being maintained, particularly between rate cases, the Commission and others will be in a position to initiate classification or complaint proceedings, as appropriate. The OCA therefore requests the Commission to require the following data to be filed annually by the Postal Service.

¹¹ A nationwide database for collection mailboxes is maintained and constantly updated by the

- a. Total number of postal vending machines selling postal products in Postal Service retail facilities
- b. Total number of franchises that sell stamps to the public
- c. Total number of insurance claims submitted to the Postal Service annually and the dollar amount of those claims
- d. Total number of insurance claims paid annually and the dollar amount paid on those claims by the Postal Service
- e. Average length of time to process insurance claims
- f. Total number of certified mail delivery labels scanned on delivery compared to the total number of certified mail service units sold
- g. Certified mail data on the time elapsed between the purchase of certified mail-return receipt requested and the return to the original mailer of the signed returned receipt (even if measured on a special study basis)
- h. Total number of complaints received by the Postal Service about certified mail-return receipt requested each year
- i. Total number of complaints received by the Postal Service about postal insurance each year
- j. Total number of delivery confirmation labels scanned each year compared to the number purchased or generated electronically (at no charge to the mailer)

- k. The average length of time for delivery confirmation scans to be placed on the internet or available to the agent receiving the delivery confirmation
- l. Number of mail mis-deliveries each year, by class of mail
- m. Number of zip code pairs for each of the following service standards in First Class: one-day areas, two-day areas, and three-day areas
- n. Number of zip code pairs for each of the following service standards in Priority Mail: one-day areas, two-day areas, and three-day areas
- o. Number of zip code pairs for each of the following service standards in Express Mail: Next Day and Second Day areas
- p. Statement of Work prepared in connection with executed Postal Service contracts for consultants or other entities to alter, update, or review the attribution or distribution of any Postal Service costs that may be used in a proceeding before the Commission
- q. Each new issue of the Postal Operations Manual within one month of its publication
- r. Total number of delivery points classified as follows:
delivery to door (residential), delivery to door (business), delivery to banks of mailboxes in apartment buildings, delivery to clusters of mailboxes (residential), delivery to banks of boxes in offices (business), delivery to cluster boxes (business) delivery to curbside

mailbox (residential), delivery to curbside mailbox (business), on premises delivery (business), delivery to concierge (residential), and delivery to concierge (business)

Wherefore, the OCA supports the proposed rules and proposes for Commission consideration the additional rules presented above.

Respectfully submitted,

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